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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,127	11/25/2003	Herbert Eichenauer	PO-7827/LeA 36,408	6193
157	7590	01/10/2006	EXAMINER	
BAYER MATERIAL SCIENCE LLC			MULLIS, JEFFREY C	
100 BAYER ROAD			ART UNIT	
PITTSBURGH, PA 15205			PAPER NUMBER	

1711

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,127

Applicant(s)

EICHENAUER ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kempner et al. (US 5,276,092) in view of Van der Helder, (WO 00/06648).

Kempner discloses a composition containing two grafted lattices both produced using persulfate/redox (although the redox portion of the system may or may not be present at column 7 lines 11-19) and which are "co-microagglomerated" (column 12, lines 46-60). Thermoplastics such as polycarbonates or polyamides may be added at column 5, lines 55-64). Flame retardants may be added at column 5, lines 30-35.

There are no specific examples using applicants' specific thermoplastics or flame retardants. However choice of applicants thermoplastics from the primary reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results, absent any showing of surprising or unexpected results.

With regard to the use of applicants (specific) flame proofing agents, Kempner discloses the use of flame retardants and the secondary reference discloses applicants flame retardants for rubber modified thermoplastics and therefore use of the flame retardants of the secondary reference in the primary reference, would have been

obvious to a practitioner having an ordinary skill in the art at the time of the invention motivated by the desirability of a flame retardant composition, absent any showing of surprising or unexpected results

Applicant's arguments filed 10-17-05 have been fully considered but they are not persuasive. Applicants argue that there is insufficient motivation to combine references in the above sole remaining rejection relying upon Kempner et al. However, the secondary reference, Van der Helder has been relied upon solely for disclosure of specific flame retardants such as are only recited by claim 6 and 7. Use of applicants thermoplastics is taught in general by the primary reference and only very minimal choosing is required from the disclosure of the primary reference alone to arrive at the invention of claims 1-5 and 8-25. As the primary reference discloses use of applicants thermoplastics for use in the invention of the primary reference, such thermoplastics are assumed workable despite the fact that admittedly intrinsic macromolecular compatibility is the exception rather than the rule. Applicants appear to argue that even assuming for the sake of argument that the references were combinable that all features of applicants claims are not present in the combination since applicants persulfate generated latex is produced in the absence of redox catalyst and applicants also require a redox generated latex in the absence of persulfate. However Kempner discloses at column 7, lines 11-19 that the redox portion of the initiation system may or may not be present. With re to claims 6 and 7 there is ample motivation in the teachings of the prior art to add applicants specific flame retardants given that the primary reference discloses

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the desirability of flame retardants and the secondary reference specific flame retardants that may be used to attain the goal of a flame retardant composition.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

Jeffrey C. Mullis
J Mullis
Art Unit 1711

JCM

1-6-06

Jeffrey Mullis
Primary Examiner
Art Unit 1711



Jeffrey Mullis
Primary Examiner
Art Unit 1711